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**NATERA, INC.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GUARDANT HEALTH, INC.,  
a Delaware corporation,

Plaintiff,

vs.

NATERA, INC.,  
a Delaware corporation,

Defendant.

Case No. 3:21-cv-04062-EMC

**STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
PATENTS, HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS**

Complaint Filed: May 27, 2021

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on

1 all disclosures or responses to discovery and that the protection it affords from public disclosure  
2 and use extends only to the limited information or items that are entitled to confidential treatment  
3 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,  
4 below, that this Stipulated Protective Order does not entitle them to file confidential information  
5 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards  
6 that will be applied when a party seeks permission from the court to file material under seal.

## 7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
11 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
12 of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
14 well as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
16 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
19 medium or manner in which it is generated, stored, or maintained (including, among other things,  
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
21 responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
23 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
24 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
25 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or  
26 of a Party’s competitor.

27 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
28 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another

1 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
 2 less restrictive means.

3 2.9 House Counsel: attorneys who are employees of a party to this action. House  
 4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
 6 entity not named as a Party to this action.

7 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this  
 8 action but are retained to represent or advise a party to this action and have appeared in this action  
 9 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.12 Party: any party to this action, including all of its officers, directors, employees,  
 11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 13 Material in this action.

14 2.14 Professional Vendors: persons or entities that provide litigation support services  
 15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
 16 organizing, storing, or retrieving data in any form or medium) and their employees and  
 17 subcontractors.

18 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
 19 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 21 Producing Party.

### 22 **3. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only Protected Material  
 24 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
 25 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
 26 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
 27 However, the protections conferred by this Stipulation and Order do not cover the following  
 28 information: (a) any information that is in the public domain at the time of disclosure to a

1 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
2 a result of publication not involving a violation of this Order, including becoming part of the public  
3 record through trial or otherwise; and (b) any information known to the Receiving Party prior to  
4 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained  
5 the information lawfully and under no obligation of confidentiality to the Designating Party. Any  
6 use of Protected Material at trial shall be governed by a separate agreement or order.

#### 7 **4. DURATION**

8 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
9 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
10 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims  
11 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
12 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
13 including the time limits for filing any motions or applications for extension of time pursuant to  
14 applicable law.

#### 15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
17 or Non-Party that designates information or items for protection under this Order must take care  
18 to limit any such designation to specific material that qualifies under the appropriate standards. To  
19 the extent it is practical to do so, the Designating Party must designate for protection only those  
20 parts of material, documents, items, or oral or written communications that qualify – so that other  
21 portions of the material, documents, items, or communications for which protection is not  
22 warranted are not swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
24 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
25 unnecessarily encumber or retard the case development process or to impose unnecessary expenses  
26 and burdens on other parties) expose the Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it designated  
28 for protection do not qualify for protection at all or do not qualify for the level of protection initially

1 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
2 mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
4 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
5 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
6 designated before the material is disclosed or produced. Designation in conformity with this Order  
7 requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but  
9 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
10 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only a  
12 portion or portions of the material on a page qualifies for protection, the Producing Party  
13 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
14 the margins) and must specify, for each portion, the level of protection being asserted.

15 A Party or Non-Party that makes original documents or materials available for  
16 inspection need not designate them for protection until after the inspecting Party has  
17 indicated which material it would like copied and produced. During the inspection and  
18 before the designation, all of the material made available for inspection shall be deemed  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
20 has identified the documents it wants copied and produced, the Producing Party must  
21 determine which documents, or portions thereof, qualify for protection under this Order.  
22 Then, before producing the specified documents, the Producing Party must affix the  
23 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” to each page that contains Protected Material. If only a  
25 portion or portions of the material on a page qualifies for protection, the Producing Party  
26 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
27 the margins) and must specify, for each portion, the level of protection being asserted.

28 (b) for testimony given in deposition or in other pretrial or trial proceedings, that

1 the Designating Party identify on the record, before the close of the deposition, hearing, or  
2 other proceeding, all protected testimony and specify the level of protection being asserted.  
3 When it is impractical to identify separately each portion of testimony that is entitled to  
4 protection and it appears that substantial portions of the testimony may qualify for  
5 protection, the Designating Party may invoke on the record (before the deposition, hearing,  
6 or other proceeding is concluded) a right to have up to twenty-one (21) days to identify the  
7 specific portions of the testimony as to which protection is sought and to specify the level  
8 of protection being asserted. Only those portions of the testimony that are appropriately  
9 designated for protection within the twenty-one (21) days shall be covered by the  
10 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
11 specify, at the deposition or up to twenty-one (21) days afterwards if that period is properly  
12 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 Parties shall give the other parties notice if they reasonably expect a deposition,  
15 hearing or other proceeding to include Protected Material so that the other parties can  
16 ensure that only authorized individuals who have signed the “Acknowledgment and  
17 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
18 document as an exhibit at a deposition shall not in any way affect its designation as  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 Transcripts containing Protected Material shall have an obvious legend on the title  
21 page that the transcript contains Protected Material, and the title page shall be followed by  
22 a list of all pages (including line numbers as appropriate) that have been designated as  
23 Protected Material and the level of protection being asserted by the Designating Party. The  
24 Designating Party shall inform the court reporter of these requirements. Any transcript that  
25 is prepared before the expiration of a 21-day period for designation shall be treated during  
26 that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
27 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period,  
28 the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within fourteen (14) days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to

1 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for  
 2 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process  
 3 only if it has engaged in this meet and confer process first or establishes that the Designating Party  
 4 is unwilling to participate in the meet and confer process in a timely manner.

5       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
 6 intervention, the Challenging Party may file a motion challenging a confidentiality designation at  
 7 any time if there is good cause for doing so, including a challenge to the designation of a deposition  
 8 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
 9 accompanied by a competent declaration affirming that the movant has complied with the meet  
 10 and confer requirements imposed by the preceding paragraph.

11       The burden of persuasion in any such challenge proceeding shall be on the Designating  
 12 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 14 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 15 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 16 material in question the level of protection to which it is entitled under the Producing Party's  
 17 designation until the court rules on the challenge.

## 18       **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19       7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 20 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 21 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 22 the categories of persons and under the conditions described in this Order. When the litigation has  
 23 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
 24 DISPOSITION).

25       Protected Material must be stored and maintained by a Receiving Party at a location and in  
 26 a secure manner that ensures that access is limited to the persons authorized under this Order.

27       7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
 28 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any



1 information or item designated “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
3 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
4 disclose the information for this litigation and who have signed the “Acknowledgment and  
5 Agreement to Be Bound” that is attached hereto as Exhibit A;

6 (b) the officers, directors, and employees (including House Counsel) of the  
7 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
8 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
10 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
11 Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants, and  
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
15 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is  
17 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
18 Bound” (Exhibit A) unless otherwise agreed by the Designating Party or ordered by the  
19 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
20 Protected Material must be separately bound by the court reporter and may not be disclosed  
21 to anyone except as permitted under this Stipulated Protective Order.

22 (g) the author or recipient of a document containing the information or a custodian  
23 or other person who otherwise possessed or knew the information.

24 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
26 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

28 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as

employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

#### 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (5) identifies (by name and number of the

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<sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 case, filing date, and location of court) any litigation in connection with which the Expert  
2 has offered expert testimony, including through a declaration, report, or testimony at a  
3 deposition or trial, during the preceding five years.

4 (b) A Party that makes a request and provides the information specified in the  
5 preceding respective paragraphs may disclose the subject Protected Material to the  
6 identified Expert unless, within 10 days of delivering the request, the Party receives a  
7 written objection from the Designating Party. Any such objection must set forth in detail  
8 the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the  
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
11 agreement within seven days of the written objection. If no agreement is reached, the Party  
12 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local  
13 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission  
14 from the court to do so. Any such motion must describe the circumstances with specificity,  
15 set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,  
16 assess the risk of harm that the disclosure would entail, and suggest any additional means  
17 that could be used to reduce that risk. In addition, any such motion must be accompanied  
18 by a competent declaration describing the parties' efforts to resolve the matter by  
19 agreement (i.e., the extent and the content of the meet and confer discussions) and setting  
20 forth the reasons advanced by the Designating Party for its refusal to approve the  
21 disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
23 burden of proving that the risk of harm that the disclosure would entail (under the  
24 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
25 Material to its Expert.

26 **8. PROSECUTION BAR**

27 Absent written consent from the Producing Party, any individual who receives access to  
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be involved

in the prosecution of patents or patent applications relating to methods for molecular residual disease (MRD) assessment and recurrence monitoring using circulating tumor DNA.<sup>2</sup> For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.<sup>3</sup> To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination or *inter partes* review). For further clarification, these prohibitions are not intended to and shall not preclude counsel from participating in post-grant proceedings or reexaminations unless and until any claim amendments are prepared, provided such counsel expressly agrees that, in connection with such proceedings, it will not rely on or use any Protected Material and will not participate in any activities that will affect the scope of the claims including without limitation advising on, drafting, amending, or shaping the scope of any amended or added claim. This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall end two (2) years after final termination of this action.

## **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is

<sup>2</sup> This Prosecution Bar applies to each individual reviewing the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material and does not impute to the law firm, institution, or company who employs the individual.

<sup>3</sup> Prosecution includes, for example, original prosecution, reissue, reexamination, and post-grant review proceedings.

1 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
 2 Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 4 Designating Party whose Protected Material may be affected.<sup>4</sup>

5 If the Designating Party timely seeks a protective order, the Party served with the  
 6 subpoena or court order shall not produce any information designated in this action as  
 7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 8 before a determination by the court from which the subpoena or order issued, unless the  
 9 Party has obtained the Designating Party’s permission. The Designating Party shall bear  
 10 the burden and expense of seeking protection in that court of its confidential material – and  
 11 nothing in these provisions should be construed as authorizing or encouraging a Receiving  
 12 Party in this action to disobey a lawful directive from another court.

13 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
 14 **THIS LITIGATION**

15 (a) The terms of this Order are applicable to information produced by a Non-Party in  
 16 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 17 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with  
 18 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
 19 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
 21 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
 22 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

23 1. promptly notify in writing the Requesting Party and the Non-Party that  
 24 some or all of the information requested is subject to a confidentiality agreement with a  
 25 Non-Party;

26 2. promptly provide the Non-Party with a copy of the Stipulated Protective

27 <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
 28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
 confidentiality interests in the court from which the subpoena or order issued.

Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>5</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

# **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

# **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

Counsel shall exert their best efforts to identify information (including documents or material) protected from discovery by the attorney-client privilege, the work-product doctrine or any other applicable privilege or immunity prior to the disclosure of any such documents or

<sup>5</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 material. If information subject to a claim of attorney-client privilege, work-product immunity, or  
2 other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally  
3 produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel  
4 as to any such privilege, doctrine, right or immunity.

5 If a Producing Party unintentionally or inadvertently discloses information that it believes  
6 is protected privileged or otherwise immune from discovery, the Party shall, within seven (7)  
7 business days upon discovery of the disclosure, so advise the Receiving Party in writing, request  
8 the information be returned. The request must describe the type of protection or privilege being  
9 asserted and the nature of the documents, communications or tangible things sufficient to allow  
10 the Receiving Party (and the Court) to assess the protection or privilege claim, including without  
11 limitation, the author of the document or communications, the recipient(s) of the document or  
12 communication, the date of the communication, and the Bates Number of the document, if  
13 applicable. If the request is made orally during a deposition, it shall be given immediate effect and  
14 the Receiving Party shall no longer refer to or use the document or information subject to the  
15 request at the deposition or otherwise, provided however, that a written request of the type  
16 described above must follow within 24 hours. If that request is made, no Party to this Litigation  
17 shall thereafter assert on this basis that the disclosure waived any privilege or immunity. If a  
18 Receiving Party receives information that the Receiving Party believes may be subject to a claim  
19 of privilege or protection from discovery, the Receiving Party shall promptly identify the  
20 information to the Producing Party.

21 When a Producing Party or Receiving Party identifies such privileged or protected  
22 information, a Receiving Party: (i) shall not use, and shall immediately cease any prior use of, such  
23 information; (ii) shall immediately take reasonable steps to retrieve the information from others to  
24 which the Receiving Party disclosed the information; (iii) shall immediately, and not later than  
25 three (3) business days after receipt of the Producing Party's request, return to the Producing Party  
26 or destroy the information and destroy all copies thereof; and (iv) shall confirm to the Producing  
27 Party the destruction under (3) above of all copies of the information not returned to the Producing  
28 Party No one shall use the fact or circumstances of production of the information in this Litigation



1 to argue that any privilege or protection has been waived. Notwithstanding this provision, no Party  
2 or its Outside Counsel of Record shall be required to return or destroy any information that may  
3 exist on any disaster recovery backup system.

4 Return of the document by the Receiving Party shall not constitute an admission or  
5 concession, or permit any inference, that the returned document is, in fact, properly subject to a  
6 claim of attorney-client privilege or work product immunity, nor shall it foreclose the Receiving  
7 Party from moving for an order in accordance with the Federal Rules of Civil Procedure that such  
8 document has been improperly designated as subject to a claim of attorney-client privilege or work  
9 product immunity, that the disclosure was not inadvertent, or that the document should be  
10 produced for other reasons. Any such motion shall be filed under seal and its contents governed  
11 by Federal Rule of Evidence 502. Any such request shall not disclose or otherwise use the content  
12 of the inadvertently produced document or information (beyond any information appearing on the  
13 privilege log or return request) in any way. The Receiving Party may, however, include with its  
14 motion a request (which the Producing Party may oppose) that the Court order an *in camera*  
15 submission of the challenged information by the Producing Party.

16 To the extent that any such inadvertently produced material has been used, included,  
17 referenced or summarized in a pleading, deposition or other proceeding, nothing in this paragraph  
18 shall require a Receiving Party to purge, redact or excise any such information that has been used  
19 in good faith before a request for the return of the unintentionally produced material. Upon a  
20 request for return of the inadvertently produced material, the Receiving Party shall refrain from  
21 any further use or dissemination of the inadvertently produced material pending determination of  
22 the privilege status of the inadvertently produced material pursuant to this Order and all applicable  
23 laws and rules.

### 24 **13. MISCELLANEOUS**

25 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
26 seek its modification by the court in the future.

27 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
28 no Party waives any right it otherwise would have to object to disclosing or producing any



1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
2 Party waives any right to object on any ground to use in evidence of any of the material covered  
3 by this Protective Order.

4 14.3 Filing Protected Material. Without written permission from the Designating Party  
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
6 the public record in this action any Protected Material. A Party that seeks to file under seal any  
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
10 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled  
11 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
12 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the  
13 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise  
14 instructed by the court.

#### 15 **14. FINAL DISPOSITION**

16 Within sixty (60) days after the final disposition of this action, as defined in paragraph 4,  
17 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
18 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
19 compilations, summaries, and any other format reproducing or capturing any of the Protected  
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit  
21 a written certification to the Producing Party (and, if not the same person or entity, to the  
22 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
23 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
24 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
28 product, and consultant and expert work product, even if such materials contain Protected Material.

Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June 30, 2021



Hon. Edward M. Chen  
United States District Judge

STIPULATED AND AGREED TO:

Dated: June 30, 2021

**NORTON ROSE Fulbright US LLP**  
**SAUL PERLOFF**

By: /s/Saul Perloff  
Saul Perloff

Attorney for Plaintiff  
GUARDANT HEALTH, INC.

Dated: June 30, 2021

**WINSTON & STRAWN LLP**  
**Katherine Vidal**  
**Thomas M. Melsheimer**  
**John C.C. Sanders, Jr.**  
**Chase Cooper**

By: /s/John C.C. Sanders, Jr.  
**John C.C. Sanders, Jr.**

Attorneys for Defendant  
NATERA, INC.

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [address],  
 declare under penalty of perjury that I have read in its entirety and understand the Stipulated  
 Protective Order that was issued by the United States District Court for the Northern District of  
 California on [date] in the case of *Guardant Health, Inc. vs. Natera, Inc.*, Case No. 3:21-cv-04062-  
 EMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
 any information or item that is subject to this Stipulated Protective Order to any person or entity  
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number]  
 as my California agent for service of process in connection with this action or any proceedings  
 related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 City and State where sworn and signed

Exhibit A